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SUBJECT: FOREIGN BUSINESS ACT AMENDMENTS STILL UP IN THE AIR

REF: A) BANGKOK 4588; B) BANGKOK 4442

1. (SBU) Summary: MP Somchai Sakulsurarat told a diplomatic and business group that his committee is still debating amendments to the Foreign Business Act but is confident it would report the bill out to the full assembly next week. Committee debate is focused on whether to grandfather foreign businesses operating in restricted business sectors. Somchai was unable to add another amendment to require a revision of restricted sectors, but believed that the political parties contesting upcoming elections were in favor of a full review and would do so after forming a government early next year. End Summary.

2. (SBU) Embassy and joint chambers of commerce representatives met over dinner on December 6 with Mr. Somchai Sakulsurarat, the National Legislative Assembly's deputy chair of a committee reviewing proposed amendments to Thailand's 1999 Foreign Business Act. The meeting followed on an earlier dinner with Somchai in late August (see ref A). Somchai's committee has been reviewing the amendments since early August after the full NLA made further changes to the law and returned the bill to committee (ref B). Only a relatively few U.S. investors would be affected by the proposed amendments thanks to protection by a bilateral investment treaty with Thailand, but concern remains among the U.S. business community that the law could prolong the current pall over the current business climate.

3. (SBU) Somchai told the group that current discussion in the committee revolved around the extent that the law would grandfather the operations in restricted areas by businesses that would be considered foreign under the new amendments. The current version requires restructuring of ownership for firms operating in areas covered in the FBA's List One and List Two which detail business areas that are in national security or culturally sensitive, though not for those in the less restrictive List Three which covers most other service sectors. Somchai said that "our group" in the committee wants a complete grandfathering for businesses in all three lists, with the exception of media, of which foreign ownership is prohibited in the new Constitution. Somchai did not say how big "our group" was, and said others in the committee disagreed with his approach and debate continued on how to proceed. He clarified that grandfathered businesses would not be capped on expanding their operations, but would not necessarily be allowed to expand into new lines of business.

4. (SBU) Somchai said he was also pushing for a revision of the three lists of restricted areas for foreign investors. He said he had tried to include a provision in the amendments that would have required a revision, but regretted that the amendments would only make a recommendation for the government to review the lists. Somchai said the political parties vying in upcoming elections had made statements in favor of reviewing the restricted sectors in the

FBA and believed they would follow through after one had formed a government.

15. (SBU) Somchai chided the foreign representatives for focusing too much on the new definition of foreigner in the amendments and not enough on pushing for a review of the lists. An embassy representative countered that the current FBA required an annual review of the lists, but that no changes had ever been made, and asked why it would be expected to take place in the next government. Somchai replied that the FBA amendments would tighten loopholes and a new government would therefore feel comfortable making changes to the lists. He discounted the possibility that Thai business interests would block any review that would bring foreign competition, saying that foreign businesses were already operating in restricted sectors and there had not been push back from local business.

16. (SBU) Somchai also expounded on the revised definition of "foreigner" that the committee had agreed upon, expanding it to include "management control" in addition to majority share ownership. The committee has not released the language of the new definition, but Somchai explained that companies with foreign shareholder control over key business decisions would be considered foreign. The three decision areas would be an increase or decrease in capital; merger and acquisition; and changes to the company's articles of association. Somchai said the amendments would focus only on foreign control at the board level and not on management.

17. (SBU) Somchai is confident that the NLA committee would complete its review of the amendments at its next meeting on December 11, and would be able to schedule the bill for a final vote as early as December 19. He said, however, that the NLA is prepared to continue considering bills after December 23 elections and through the end of January when he expected a new Assembly would be seated. A U.S.

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business representative gamely attempted to convince Somchai to put off consideration of the bill until the next government, but Somchai rejected the idea, saying the amendments had been in the works for nearly a year and would not be delayed further.

18. (SBU) Comment: Somchai is perhaps overly optimistic about the likelihood of the FBA amendments' prospects for passage, and also that the next government would make a concerted effort to open additional business sectors to foreign ownership. There are doubts that there is enough time to resolve the remaining controversies in time for passage by this government. It is still not clear whether the NLA will continue to pass legislation after the election. As well, while the political parties have expressed support for foreign business during campaigning, they have not made explicit promises to revise the lists.  
BOYCE